



# EAST SAN JOAQUIN AGRICULTURE ORDER ADOPTION HEARING FEBRUARY 7, 2018- ITEM 13

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# Incentivizing Coalitions through Anonymous Reporting

**Current Order** “For third-party programs only, the data shall be submitted with Anonymous Member IDs.”

- ▶ **2016 Draft Order at 29**: “[The Anonymous reporting]option is less compelling because it limits use of the data to analysis and oversight where management practices have failed...”
- ▶ **Brown Act**: “The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.”

# Requested Change

Revised Second Draft (Pg. 32)

The requirement to submit grower-specific field-level management practice implementation data to the regional water board shall be precedential statewide. ~~For third-party programs only, the data shall be submitted with Anonymous Member IDs.~~

# Nitrogen Reporting Exemption

“...Any category of Members (such as growers of a particular crop or growers in a particular area) seeking to be exempted from irrigation and nitrogen planning and reporting requirements shall make a demonstration, for approval by the relevant regional water board, that nitrogen applied to the fields does not percolate below the root zone in **an amount that could impact groundwater** and does not migrate to surface water through discharges, including drainage, runoff, or sediment erosion. **These** criteria for determining categories of growers that may be exempted from the irrigation and nitrogen planning and reporting requirements shall also be precedential statewide.”

# Requested Change

Revised Second Draft (Pg. 36)

**Preferred Change:** Remove the reporting exemption of Nitrogen found on page 36 in its entirety.

**Alternative:** "...Any category of Members (such as growers of a particular crop or growers in a particular area) seeking to be exempted from irrigation and nitrogen planning and reporting requirements shall make a demonstration, for approval by the relevant regional water board, that nitrogen applied to the fields does not percolate below the root zone in any amount ~~that could impact groundwater~~ and does not migrate to surface water through discharges, including drainage, runoff, or sediment erosion. ~~The regional water board will provide adequate opportunity for public comment, including a public comment period and a public hearing for Board adoption.~~ These criteria for determining categories of growers that may be exempted from the irrigation and nitrogen planning and reporting requirements shall also be precedential statewide."

# AR Data Outliers

- ▶ Second Revised Order (Pg. 53): The requirement for follow up and appropriate training for AR data outliers and for identification of repeated outliers as set out above shall be precedential in for irrigated lands regulatory programs statewide, except that the regional boards will be responsible for the follow up and training for irrigated lands regulatory programs that directly regulate growers without a third-party intermediary.

# Requested Change

Second Revised Order (Pg. 53): **Make AR Targets Enforceable.**

The requirement for follow up and appropriate training for AR data outliers and for identification of repeated outliers as set out above shall be precedential in for irrigated lands regulatory programs statewide, except that the regional boards will be responsible for the ~~enforcement of A/R exceedances follow up and training for irrigated lands regulatory programs that directly regulate growers~~ without a third-party intermediary.



# Core Principals

- PROTECTION OF PUBLIC AND ENVIRONMENTAL HEALTH AND SAFETY
- TRANSPARENCY (AGGREGATION AND ANONYMIZATION ARE CONTRADICTORY)
- MONITORING THAT CAN DETECT AND FIND EXCEEDANCES
  - Density in time and space
  - Speed of response
  - Appropriate test organisms and follow up testing
- WELL CONSIDERED LINKAGE BETWEEN MANAGEMENT PRACTICES AND WQ
- ANTI-DEGRADATION ANALYSIS
- TIME SCHEDULE FOR COMPLIANCE
- ENFORCEABLE STANDARDS



# Change (1/19/18)

- ▶ **Addition of a broad new right of privacy (page 19):**

In striking that balance, the water boards also take into consideration grower concerns with disclosure of trade secrets, private economic and proprietary business information, and general concerns regarding privacy.

Overbroad and vague. Will this appear in stormwater orders?  
Industrial permits?

# What we suggest

- ▶ Revert to original second draft.

# Change (1/9/18)

- ▶ The requirement for calculation of annual and multi-year A/R ratio and A-R difference parameters for each grower by field shall be precedential for irrigated lands regulatory programs statewide, except as described below:

Foot 114 and 115 refer to other footnotes.

Footnote 114 refers to footnote 106 which has little to do with this. We believe 114 refers to 107, which is very very complicated.

# What we suggest

Either

- ▶ Remove precedent entirely, or
- ▶ Clarify: “In areas where crops and/or growers change from year to year, or even within a year, the regional board will have the discretion to specify the spatial and temporal scale of reporting to reflect cropping and grower/responsible party.

# Change (1/19/18)

- ▶ In reference to A-R and coefficients, the revised second draft states:

**“The regional water boards must approve the values in consultation with State Water Board staff, following an opportunity for public review and comment, but in developing the coefficients, the regional water boards may rely on their own research.” (pg 43).**

We fear that there could be endless debate over R values and, region and farm specific values for coefficients. Debate will lead to delay in identifying “outliers.”

# What we suggest

Add language:

**“It is not the intent of the State Board to delay regional boards in their efforts to identify outliers and educate or enforce against excessive dischargers. In the event A-R values or coefficients are not available when required by the State or regional board, the best available science can be used to determine compliance.”**

# Change (1/19/18)

- ▶ Eliminates the findings that the current surface water quality finding is insufficient (pgs 55-56)



# What we suggest

- ▶ **Revert to original second draft text:**

[H]aving now carefully reviewed the particular surface water monitoring framework established in the Eastern San Joaquin Agricultural General WDRs, we cannot find that it is, in fact, “of sufficient density (spatially and temporally) to identify general locations of possible pollution.”

# Change (2/2/18)

- ▶ **Repeated insertion of “receiving” before water when referring to surface water testing.**

Expert panel stated: “When/if problems are identified, sampling should move upstream to locate the source of the problem.”

Locating the source could require testing of ditches and waters that may not be WOTS.

# What we suggest

- ▶ Remove the insertion of the word “receiving” in this context.

# Change (1/19/18)

- ▶ **The revised second draft allows for a discretionary exception to reporting N removed for small farms and “diversified socially disadvantaged growers” (pg 41).**

- It should be a goal of this order to have all growers understand the relationship between N added and removed, and the impacts of the excess.

- Requiring this understanding will drive the creation of educational tools and opportunities; excluding groups, will not.

- Boards have – and have consistently demonstrated -- adequate enforcement discretion to handle this situation.

# What we suggest

- ▶ Revert to original second draft.

# Finally

- ▶ We feel we have not been given an adequate opportunity to meaningfully comment.
  - ▶ Layers upon layers of revisions
  - ▶ Revisions to revisions immediately before the adoption hearing
  - ▶ Limited time to offer oral comment
  - ▶ No provision for written comment
  - ▶ Decision to make order precedential brought in a vast impacted population that was never adequately noticed.